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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports due in 1996

Addendum

NORWAY*

[6 February 1997]

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Introduction

1. Reference is made to the initial report submitted by Norway (CAT/C/Add.3), to the first supplementary report submitted by Norway (CAT/C/17/Add.1) and to the summary records of the 122nd and 123rd meetings of the Committee concerning the consideration of Norway's first supplementary report (CAT/C/SR.122 and 123). Reference is also made to Norway's core document (HRI/CORE/1/Add.6).

2. Part 1 of the initial report and the introduction to the first supplementary report contain general information on, inter alia, relevant international instruments ratified by Norway. As regards the status of human rights instruments in domestic law, reference is made to the core document (paragraphs 8-11) and to Part II below.

3. In preparing this document, due regard has been given to the general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention. However, the Government has considered it expedient to include additional information requested by the Committee under the relevant articles in Part I. The information provided under Part II below relates to the Committee's conclusions following the consideration of Norway's first supplementary report. The information provided below under articles 2-15 applies to some extent not only to torture as defined in article 1 in the Convention, but also to other cruel, inhuman or degrading treatment or punishment (see article 16).

4. In accordance with the reporting procedure described in the core document (paragraphs 17-18), a draft of the present report has been submitted for comment to the Government's Advisory Committee on the Human Rights Working Group on UN-related Issues.

5. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited various prisons and police establishments in Norway from 27 June to 6 July 1993. A specific reference to the Committee's visit will be made under article 16 below. The Committee's report to the Norwegian Government on its visit to Norway, adopted on 2 March 1994 (CPT (94) 1), the response of the Norwegian Government of 21 September 1994 (CPT/Inf (94) 12) to the Committee's report, and the subsequent report of 9 March 1995 (1257/95 D EBJ/kmr) providing a full account of action taken by the Norwegian authorities to implement the Committee's recommendations are annexed to the present report (annexes 1, 2 and 3).

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Article 2

Special investigative bodies

6. Reference is made to Norway's initial report (paragraphs 9 and 12) and Norway's first supplementary report (paragraphs 3-4) regarding special investigative bodies (SIB). The SIB were set up after allegations of police

brutality in the city of Bergen in the 1980s to ensure that criminal charges against the police were investigated impartially and independently by special bodies outside the police force. Each body consists of three members: a well-qualified lawyer (normally a judge), an advocate with experience as defence counsel and a person with experience of police investigation. The board is responsible for investigating cases against police officers and officers of the prosecuting authority for offences committed in the course of their duties. When the board has finished its investigation, the case is forwarded with a recommendation to the District Public Prosecutor who decides whether the accused shall be put on trial.

7. In April 1995, new subsections 7 and 8 were added to section 67 of the Criminal Procedure Act concerning the SIB. Subsections 7 and 8 now read:

> "Even if there is no reason to suspect a criminal act, the King may decide that such criminal investigation as is referred to in the sixth paragraph shall be commenced if any person dies or is seriously injured as a result of any performance of duty by the police or the prosecuting authority. The same applies if any person dies or is seriously injured while he is in care of the police or the prosecuting authority.
>
> "A police official within the meaning of the sixth and seventh paragraphs includes cadets at the Police College in practical training and manpower mobilized from the police reserve."

8. These amendments came about as a result of a thorough evaluation of the investigative bodies' role and the results of their work carried out in 1993/94. The reason for including the seventh subsection is that certain incidents are so serious that they require an investigation even though there is no suspicion of a criminal offence having been committed. These investigations should therefore not be interpreted as the officers involved being suspected of a crime. The reason for the inclusion of the eighth paragraph is that the cadets at the Police College and manpower from the police reserve are not considered to be "officers of the police", and they could originally not be investigated by the SIB. However, in the eyes of the public they do the same work as - and appear to be - ordinary police officers.

9. During the period 1991-1995, 2,322 cases were reported to these bodies. In 197 of the cases, the investigative bodies found reason to believe that a criminal offence had taken place. Only 16 of these cases related to the use of force by the police.

10. There was a significant increase in the number of reported cases from 1991 to 1993 (515 versus 609 reports). The increase was probably, at least in part, a result of the fact that the bodies were inactive for most of 1992 due to a conflict between their members and the Ministry of Justice regarding compensation. However, since 1993 the number of reports has stabilized at about 600 a year. The number of reports relating to violence, gross negligence/misconduct and traffic crimes respectively have all remained fairly stable in relation to one another.

11. In his annual report of 1995, the Director General of Public Prosecutions proposed with regard to the SIB that a research project be launched in order to gather more background material on the above statistics. The proposal is currently being considered by the Ministry of Justice.

Emergency legislation

12. With respect to Norwegian emergency legislation, the Government is planning to undertake an in-depth, systematic review of the consistency of legislation pertaining to emergency situations in the defence field with international standards, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in the course of 1996 and 1997. Existing Norwegian legislation in this field is, however, believed to be consistent with applicable international instruments.

Article 3

13. Reference is made to the information supplied in Norway's initial report and first supplementary report with regard to this article, which still applies.

14. During the consideration of the first supplementary report, the Norwegian delegation was asked how the Immigration Act actually works, e.g. (a) whether foreigners could be denied entry to the country by the border police and turned back; (b) if so, and if they were refugees, were they sent back to the country of first asylum or elsewhere; (c) what authority decided on the right to asylum: could its decision be appealed and, if so, to which court? (See CAT/C/SR/122, para. 10.) With regard to those questions:

(a) A foreign national who claims to be a refugee or otherwise provides information which suggests that the provisions on protection in section 15, subsection 1, of the Immigration Act will apply, cannot be denied entry to the country by the border police and turned back. The case shall be referred to the Directorate of Immigration for consideration and decision;

(b) The refugees can be sent back to the country of origin or the country of first asylum, but only if the country is regarded as safe (see section 15 of the Immigration Act);

(c) The Directorate of Immigration decides on the right to asylum. The Directorate of Immigration is an independent central administrative office. All asylum seekers whose asylum application has been rejected by the Directorate of Immigration can appeal the decision to the Ministry of Justice.

Extradition

15. The Norwegian Extradition Act of 13 June 1975 states in section 16 that extradition may not take place if it may be assumed that there is a grave danger that the person concerned, for reasons of race, religion, nationality, political convictions or other political circumstances, will be exposed to persecution directed against his life or liberty, or that the said persecution is otherwise of a serious nature. Section 7 states that extradition may not take place if it would conflict with fundamental humanitarian considerations,

especially on account of the person's age, condition of health or other circumstances of a personal nature. In this connection, mention may be made of an extradition case which has received considerable attention.

16. On 16 September 1993, three Iranian nationals hijacked a Russian aeroplane in Azerbaijan and demanded that it be flown to Norway via Russia. An extradition request was subsequently made by the Russian authorities. The Iranians in their representation to the Ministry of Justice made reference to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the European Convention on Human Rights and submitted that their state of health and the standard of and conditions in Russian prisons should bar their extradition to Russia. The case was tried at all levels of the Norwegian courts system, and the Supreme Court ruled that the criteria for extradition were met. After having carefully considered the objections raised by the Iranians, the Government decided to comply with the extradition request. The Government was of the opinion that extradition would not in this particular case be contrary to the present Convention or other applicable international standards and considered it decisive that the aircraft hijacking was an extremely grave offence, which was carefully planned and which endangered the lives of the passengers and crew. The extradition was granted on several conditions, inter alia, that the death penalty must not be imposed and that the persons extradited must not be deported to the Islamic Republic of Iran, even after having served a possible sentence.

17. On 13 January 1995, the European Commission of Human Rights rejected a request made by the hijackers with regard to rule 36 of the Rules of Procedure of the Commission concerning interim measures.

18. Norwegian authorities are monitoring the conditions of the Iranians in Russia. Representatives from the Norwegian Embassy in Moscow have made several visits to the prison to make sure that the situation of the Iranians is satisfactory. The Embassy is in continuous contact with the Russian authorities and the Russian lawyer appointed for the Iranians.

Article 4

19. The information supplied in the initial report (paragraphs 17-21) and in Norway's first supplementary report (paragraphs 7-16) still applies.

Article 5

20. The information supplied in Norway's first supplementary report (paragraphs 17-18) still applies.

Article 6

21. In the course of the consideration of Norway's first supplementary report, the Chairman of the Committee stated that he was not sure that the measures described in the report (paragraph 19) were in keeping with article 6, paragraph 1, of the Convention (see CAT/C/SR.122, para. 38). (Article 6, paragraph 1, requires any State party in whose territory a person alleged to have committed any offence referred to in article 4 is present to take him into custody or take other legal measures to ensure his presence.)

22. Chapter 14 of the Criminal Procedure Act contains general provisions on arrest and remand in custody. These also apply to persons suspected of having committed any offence referred to in article 4 of the Convention. (A copy of the English translation of chapter 14 of the Act is enclosed as annex 4.)

23. According to section 171 of the Act, a person may only be arrested if he or she is suspected of having committed one or more acts punishable by law with imprisonment for a term exceeding six months. Torture is defined as an act causing severe pain or suffering. Such acts will fall within the ambit of section 228, subsection 2 (if not under sections 229 or 231). Reference is made to Norway's initial report (paragraphs 17-19) and the General Civil Penal Code (enclosed as annex 5). The maximum penalty under section 228, subsection 2, is imprisonment for three years. This means that the requirement that the act in question must be punishable with imprisonment for a term exceeding six months will be satisfied when someone is suspected of having committed an offence referred to in article 4.

24. According to section 171 of the Criminal Procedure Act, however, arrest may only take place when there is reason to fear that the suspect will evade prosecution or execution of a sentence, when there is an immediate risk that he will interfere with any evidence, or when detention is necessary to prevent him from committing a new crime. Section 172 applies to serious cases where the person is suspected to have committed a crime for which the maximum penalty is at least 10 years' imprisonment. Under section 172, it is sufficient in order to arrest a person that there are circumstances which strengthen the suspicion to a marked degree.

25. Even if the law does not state that a person suspected of having committed torture shall be arrested, there is little reason to fear that such a person will not be arrested. According to section 184 of the Criminal Procedure Act, remand in custody may be ordered if the conditions prescribed in sections 171 and 172 are fulfilled.

Article 7

26. In the course of the consideration of Norway's first supplementary report, the Chairman of the Committee also required additional information in order to determine whether paragraph 21 of the report, relating to the implementation of article 7 of the Convention, meant that persons would be extradited or judged in Norway (see CAT/C/SR/122, para. 38).

27. A person who with just cause is suspected of torture will be extradited if there is a request for extradition and the requirements for extradition set out in the Extradition Act are fulfilled. If not, he or she will be prosecuted in Norway if the prosecution authority deems that the evidence will lead to a conviction. If not, the case will be dismissed.

28. According to Act No. 38 of 24 June 1994 on Implementation in Norwegian Law of the United Nations Security Council Decisions to Establish International Courts for Crimes in the Former Yugoslavia and Rwanda, surrender may take place to these international courts upon request. According to the provisions of the Act, Norwegian courts and other authorities will also, upon

request, give these international courts legal assistance, such as the identification and localization of persons, examination of witnesses and experts, and arrest and detention of persons.

Article 8

29. Norway's initial report (paragraph 24) and first supplementary report (paragraphs 22-23) still apply.

30. In the course of the consideration of the first supplementary report, the Chairman asked whether article 8 was properly implemented (see CAT/C/SR/122, para. 38). It should be noted that extradition from Norway can be carried out even in the absence of an extradition agreement between Norway and the requesting State. Reference is made to section 26, subsection 3, in Act No. 39 of 13 June 1975 relating to Extradition: "Extradition and other forms of legal assistance in criminal cases may take place in pursuance of this Act, even if there is no obligation to do so according to a treaty Norway has concluded with a foreign State regarding the question." In accordance with article 8, acts of torture will, as a general rule, be extraditable offences.

31. The extradition agreements to which Norway is a party define the offences which constitute grounds for extradition according to the minimum sentence of imprisonment.

32. According to article 2 of the European Convention on Extradition, "Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months."

33. Article 4 of an agreement on extradition made between Norway and Australia reads as follows:

> "For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a period of more than one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a penalty remains to be served."

34. The sentence applicable to violations of section 228, subsection 2, of the General Civil Penal Code (see Norway's initial report, paragraphs 18-19) is imprisonment for a maximum of three or five years. According to section 229, the period of imprisonment is a maximum of three, six or eight years. The minimum sentence of imprisonment in section 231 is two years, whereas section 232 refers to the above-mentioned sections regarding sentences. This implies that where a severe injury, e.g. torture, is caused, it is an offence which qualifies for extradition.

Article 9

35. Reference is made to Norway's first supplementary report (paragraph 24), which still applies.

36. In the course of the consideration of that report, the Chairman asked why the word "can" was used in paragraph 25 of the report, as such wording fell short of the obligations under the Convention, in which the word "shall" is used (see CAT/C/SR.123, para. 15). As mentioned above, the Norwegian delegation replied that assistance will be given to a foreign State (in accordance with article 9) irrespective of whether or not an agreement on mutual assistance has been concluded.

Article 10

37. Reference is made to Norway's first supplementary report (paragraphs 26-29), which still applies.

Child welfare institutions

38. In February 1995, the Ministry of Children and Family Affairs appointed a committee of experts to evaluate the conditions for coercive action related to placement and detention in institutions pursuant to sections 4-24 and 4-26 of Act No. 100 of 17 July 1992 relating to Child Welfare (enclosed as annex 10). One important objective for the committee was to find new and more adequate ways of organizing and enhancing the quality of treatment and education for young people with serious behavioural problems. One of the main proposals presented by the committee concerned more education and information for the personnel. The Ministry of Children and Family Affairs is about to examine the proposals made by the committee, and will decide whether the proposals should lead to legislative amendments or other measures.

Article 11

39. Reference is made to Norway's initial report (paragraphs 27-28), and Norway's first supplementary report (paragraphs 30-31), which still apply. Reference is also made to article 16 below concerning child welfare services.

Article 12

40. Reference is made to Norway's first supplementary report (paragraphs 32-34), which still applies. Reference is also made to paragraphs 5-7 above.

Article 13

41. Reference is made to Norway's initial report (paragraphs 31-32), and Norway's first supplementary report (paragraphs 36-38), which still apply. Reference is also made to paragraphs 6-11 above, concerning special investigative bodies. The following may be added to this:

Child welfare

42. The Child Welfare Act, section 6-3, states that a child may act as a party in a case and claim rights as a party, provided that the child has attained the age of 15 and understands the matters involved in the case. The county welfare board may also grant children under the age of 15 rights as a party in special cases. In cases involving measures for children with behavioural problems, the child shall always be considered as a party. The status of being a party in cases where a child is placed in an institution gives the child the right to appeal and to have the case promptly and impartially examined by the institution's competent authorities, namely the child welfare services and the county social welfare board.

The Parliamentary Ombudsman

43. In the course of the consideration of Norway's first supplementary report, the Norwegian delegation was asked about further information on the office of Ombudsman, and asked what cases the Ombudsman dealt with (see CAT/C/SR.122, para. 35).

44. The Parliamentary Ombudsman is responsible for ensuring that the public administration has not acted incorrectly or unjustly towards any citizen. He operates primarily on the basis of complaints from the general public, but he may also carry out investigations on his own initiative.

45. The Ombudsman may investigate cases from all administrative sectors. He may, for instance, investigate complaints against the police or prison administration. The Ombudsman is entitled to express his opinion on matters which come under the scope of his powers. He cannot make legally binding decisions, but his opinions carry great weight. In the past few years, the Ombudsman has been putting greater emphasis on the importance of the international human rights obligations which are incumbent upon Norwegian authorities when he investigates individual complaints or conducts investigations on his own initiative.

46. Enclosed as annex 11 is a summary in English of the Ombudsman's Annual Report for 1995, which contains more detailed information about the work of the Ombudsman, as well as a translation of Act No. 8 of 22 June 1962 concerning the Parliamentary Ombudsman, and the Directive to the Ombudsman laid down by the Storting. Enclosed as annex 12 is also a leaflet describing the procedure for addressing complaints to the Ombudsman.

47. Since the submission of Norway's first supplementary report in 1992, the Ombudsman has not rendered any statement in which the public authorities have been criticized solely on the grounds that a person has been exposed to torture or other cruel, inhuman or degrading treatment, but such considerations have nevertheless been relevant in some cases. Enclosed as annex 13 are summaries of two cases in which the Ombudsman criticized the relevant authorities, one concerning a lack of medical supervision for inmates (case 42/90), the other concerning submission of negative urine samples as a condition for participation in daily community life (case 92-1996).

48. According to section 5 of the Act concerning the Ombudsman, he may also deal with a matter on his own initiative. In 1996, the Ombudsman initiated an investigation of a case concerning persons remanded in custody in police cells. The case raised questions with regard to Norway's treaty obligations under the European Convention on Human Rights (article 3) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The investigation is soon to be completed. Reference is made to paragraphs 63-66 below.

Article 14

49. It appears from comments made in the course of the consideration of Norway's first supplementary report (see CAT/C/SR.122, para. 39) that Norway's previous reports have not been sufficiently clear when describing the law relating to compensation for victims of torture and other cruel, inhuman or degrading treatment or punishment.

50. It should first be underlined that the compensation scheme which ensures that all victims of violent crimes receive compensation from the State for economic loss up to a certain amount is not the only remedy, nor the most relevant, for a victim of torture. It will only come into play if the State is not liable as the employer of the perpetrator, pursuant to the provisions of chapter 2 of Act No. 26 of 13 June 1969 on Compensation for Damages, or according to unwritten rules of law. Section 2-1, subsection 1, of the Compensation for Damage Act reads:

> "An employer is liable for damage caused wilfully or negligently during an employee's execution of work or task for the employer, in that account is taken of whether the demands the injured party may reasonably make as regards the work or service are disregarded. Such liability does not include damage which is due to the employee going beyond what may reasonably be expected according to the kind of work or field of work and the character of the work or task."

51. If (in exceptional cases) the State should not be held liable pursuant to the exception clause in the second sentence, liability will be established if the State is to be blamed for not having established routines which prevented the unlawful treatment. There is no economic limitation on the liability of the State under this Act.

52. Second, it should be pointed out that in Norway, necessary medical treatment is free or almost free of charge. Thus, necessary medical treatment will be provided for victims of torture or other cruel, inhuman or degrading treatment or punishment.

The Psychosocial Centre

53. In the course of the consideration of Norway's first supplementary report, the Norwegian delegation stated that it would forward any documentation published by the Psychosocial Centre (see CAT/C/SR.123, para. 10). Enclosed as annex 6 is further information about the Centre.

Annexes 7, 8 and 9 contain studies published by the Centre on the effects of torture as experienced by a number of refugees, and on how the refugees who are victims of torture are treated at the Centre.

Article 15

54. In the course of the consideration of Norway's first supplementary report, the Chairman of the Committee, with reference to paragraph 41 of that report, asked when testimony made during preliminary investigations could be quoted at a trial, and stated that the fact that a judge may decide to disregard a testimony made under duress was not enough to satisfy the requirement in article 15 (see CAT/C/SR.122, para. 40).

55. The Criminal Procedure Act, section 290 (annex 4) prescribes when previous statements made by the person who is indicted may be read out during the trial. It reads as follows:

> "Any reproduction in a court record or a police report of any statement that the person indicted has previously made in the case may only be read aloud if it conflicts with his evidence during the main hearing or relates to points he refuses to comment on or declares that he does not remember, or if he does not attend the hearing. The same applies to any written statement that he has previously made in relation to the case."

56. The Criminal Procedure Act does not contain any provisions which state that statements which are established to have been made as a result of torture shall not be invoked as evidence. This does not mean that the judge shall accept such statements as evidence. The Supreme Court has stated: "Even if evidence is not prohibited directly by a statutory provision, there may be situations in which the prosecution authority cannot be allowed to invoke the evidence". (Norwegian Law Gazette 1990, p. 1008). So far, the question of whether to allow as evidence a statement made as a result of torture or other cruel, inhuman or degrading treatment has not arisen. Taking into account that article 96 of the Constitution explicitly prohibits the use of torture under interrogation, and the principle that Norwegian law shall, if possible, be construed so as to be in conformity with international conventions to which Norway is a party, it is unthinkable that invocation of a statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment would be allowed to be invoked.

Article 16

57. Reference is made to Norway's initial report (paragraphs 35-36), which still applies. The following may be added thereto:

Mentally retarded persons

58. In 1996 the Storting passed a bill relating to the rights of, and restrictions on and control of the use of coercion and force, etc. on certain mentally retarded persons, as an amendment to the Acts relating to Social Services and Municipal Health Services. This bill is incorporated as a new chapter 6A in Act No. 81 of 13 December 1991 relating to Social Services,

which is enclosed as annex 14. Reference is also made to section 6-10 of the Act relating to Municipal Health Services, included in the same annex. The rules are not aimed at any specific place, such as an institution, but wherever health and/or social services are provided (see section 6A-2, subsection 1). According to section 6A-3 any use of power must be "professionally and ethically justifiable". There are extensive rules concerning procedure, review and appeal (sections 6A-6-6A-9). An advisory group is also to be appointed. The task of this group is to monitor the way the Act is applied in practice (section 6A-14).

59. According to the Act relating to Social Services, punishment or treatment which is degrading and violates a person's integrity, is not permitted (section 6A-3, last subsection). The bill to the Storting (Proposition No. 57 1995-96 to the Odelsting) concerning the above-mentioned amendment to the Act relating to Social Services includes an appraisal of the bill in relation to human rights, particularly the European Convention on Human Rights. According to the Proposition, acts in violation of article 3, which prohibits torture and inhuman or degrading treatment or punishment, would also be contrary to the Act.

Child welfare

60. The Child Welfare Act, which entered into force on 1 January 1993, regulates the activities of the child welfare services, which carry out various measures such as providing relief, supervision and counselling. The primary objective of the Child Welfare Act is to ensure that children living in detrimental conditions receive the necessary assistance at the right time.

61. The authority to make decisions pursuant to the Child Welfare Act has been delegated to an independent county social welfare board. The county welfare boards have the competence to make decisions in cases involving, inter alia, the possible withdrawal of parental responsibility for a child, or in other cases involving the use of coercive measures. The decisions of the county social welfare boards may be brought before a court for judicial review. The measures mentioned under the competence of the social welfare board may be used in cases concerning sexual exploitation of children, child prostitution and child pornography. When applying measures under the Child Welfare Act, crucial importance shall be attached to the best interests of the child.

62. The main responsibility for child welfare policy lies with the Ministry of Children and Family Affairs. According to the Child Welfare Act, section 5-6, the county governor in each of Norway's 19 counties is the competent authority. His or her duties include supervision, counselling and guidance of institutions in which the children are placed. According to section 4-16, the child welfare services in each municipality shall closely follow the development of a child placed in an institution. At the end of 1990, 940 children lived in child-care institutions, whereas the number in 1994 was 510.

Prisons and police custody

63. The figures below show the extent to which the most severe coercive and disciplinary measures are used in Norwegian prisons:

Year	Security cell (number of times)	Security bed (number of times)	Solitary confinement (number of times)
1991	269	10	1 003
1992	290	16	935
1993	201	7	875
1994	160	12	946
1995	224	4	(figures not yet available)

64. The use of security cells and security beds are in most cases limited to a period of time less than 24 hours. Solitary confinement usually lasts 2-3 days.

65. Due to necessary renovation of the Oslo County Prison (Oslo kretsfengsel) in 1996, 87 custody cells were temporarily closed down. In the meantime cells intended for persons remanded in police custody had to be used as regular custody cells. Special arrangements were made in order to create suitable conditions in the cells: beds were brought in, the inmates were given the opportunity to take daily showers, and they were allowed to leave the cells as in a regular custody ward in a prison. However, the conditions in the police custody cells were not as good as in a prison custody ward, and the situation of the inmates was heavily criticized in the media.

66. The Prison Board made various attempts to remedy the situation, and the developments in the case were under constant surveillance. In particular, it was important to make sure that the inmates who had been in police custody cells for the longest time were the first to be transferred to cells in prison custody wards when such cells were available. In a coming report to the Storting on the future care and confinement of criminals, the capacity problems in Norwegian prisons will be further assessed.

Health services for persons held in custody at the Oslo Police Headquarters

67. As mentioned in paragraph 5 above, the European Committee for the Prevention of Torture (CPT) visited Norway in 1993. In its report, the Committee criticized the health conditions of persons held in custody at the Oslo Police Headquarters. In June 1995 the Ministry of Justice appointed a working group whose mandate was to study and report on the need for health services for persons held in custody at Oslo Police Headquarters.

68. The criticism mainly referred to the absence of any organized health service at Police Headquarters. This does not, however, mean that health facilities are not available to persons held in custody. As far as possible,

steps are taken to ensure that detainees receive medical attention and treatment. According to current health regulations, a patient has a right to be examined by a doctor of his or her choice. These regulations also apply to detained persons. It should be noted that medical services, both at Police Headquarters and in prisons, are run independently of the police and prisons.

69. The above-mentioned working group has recently submitted its recommendations. Its main recommendation concerns the establishment of an organized health service staffed by nurses, and a doctor with medical responsibility. A further recommendation concerns alterations to the detention premises based on advice given and rules issued by the Norwegian Board of Health. These recommendations are presently being considered by the Ministry of Justice and Police.

Detention of asylum seekers

70. According to section 37, subsection 5, of the Immigration Act, a foreign national may be arrested and remanded in custody in accordance with the procedure described in section 174 et seq. of the Criminal Procedure Act, if there is reason to suspect that he or she has given a false name. The total period of remand in custody may not exceed 12 weeks, unless there are special grounds which justify a longer remand. Custody may not be used if it would be a disproportionately severe reaction against the foreign national. According to section 37, subsection 5, of the Immigration Act, the court shall try the use of custody.

71. According to section 41, subsection 3, of the Immigration Act, a foreign national may be arrested and remanded in custody in accordance with the procedure in section 175 et seq. of the Criminal Procedure Act to ensure that it shall be possible to implement a decision. Custody may be imposed for a maximum period of two weeks. The time limit may only be extended if the foreign national does not voluntarily leave the realm and it is highly probable that otherwise the foreign national will evade the implementation of a decision of expulsion. In such cases the time limit may be extended for a maximum of two weeks, but not more than twice.

72. The court appoints a legal representative when it tries the question of custody pursuant to section 37, subsection 3, of the Immigration Act. All asylum seekers in detention receive an explanation of the reasons for their detention by the police and their legal representative. The asylum seekers are also informed about their rights and given an effective opportunity to challenge the lawfulness of their detention.

73. The Ministry of Justice continuously evaluates the practice of section 37, subsection 5, of the Immigration Act.

74. There is a continual influx to Norway of asylum seekers whose identity has not been established. Reports from the police show that detention is infrequently used in such cases.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

75. Following the consideration of Norway's first supplementary report, the Committee concluded that the relationship between international law, in particular, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Norwegian law constituted a problem. The Committee recommended that Norway should include a definition of torture in its domestic law and that it should explicitly characterize torture as a crime, or make the Convention part of Norwegian domestic law (see CAT/C/SR.123, paras. 26 and 27).

The status of human rights conventions in Norway

76. A committee set up in 1989 to suggest how to incorporate certain human rights conventions into domestic law submitted its report, NOU 1993:18, in May 1993. A copy of chapter 16 of the report, which contains an English summary, is enclosed as annex 15. The committee suggested that a new constitutional provision as well as an act relating to human rights should be adopted. The constitutional provision should state the duty of the public authorities to respect and secure human rights, and declare that further provisions concerning the implementation of human rights conventions should be laid down by statute. The "Human Rights Act" should state that the two International Covenants on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, with protocols, should apply as statutory law. The committee regarded these conventions as core instruments of the international and regional protection of human rights. It was of the opinion that, at least for the time being, it would be wise to limit the incorporation to these conventions. One important reason was that it would be difficult to draw a line between conventions which ought to be incorporated and other conventions if more conventions were to be incorporated. A number of institutions and organizations which were asked to give their views supported these suggestions.

77. A constitutional provision as suggested by the committee was adopted by the Storting on 15 July 1994, and inserted into the Constitution as article 110 C. The provision reads: "It is the responsibility of the authorities of the State to respect and secure human rights. Specific provisions concerning the implementation of treaties pertaining thereto shall be laid down by law."

78. A bill on human rights in line with the draft presented by the committee is presently being prepared. The bill is scheduled to be presented in the spring of 1997. If the Human Rights Act were to incorporate a wider range of human rights instruments, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would certainly be among them. However, even if the Convention were to be incorporated directly into Norwegian law, its provisions concerning the crimes in question are not specific enough regarding punishment to be an independent basis for conviction. Article 96 of the Constitution lays down that in order to have a person convicted, there must be a statutory provision which states that the act in question (e.g. torture) is prohibited and which sets out the penalty for such acts. The Convention would therefore not be a substitute for such a provision even if it was given the status of law.

79. Regardless of the forthcoming Human Rights Act, human rights instruments have been invoked and considered by the courts in an increasing number of cases during the present decade. However, the Government is not aware of any court cases in which the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been invoked.

Definition of torture

80. The Norwegian Government has taken due note of the Committee's recommendation that Norway should include a definition of torture in its domestic law and that it should explicitly characterize torture as a crime.

81. The General Civil Penal Code is presently being redrafted by a committee appointed by the Government (Straffelovkommisjonen). The committee intends to submit its report, containing a new draft General Civil Penal Code, in 1999. The chairman of the committee has been made aware of the Committee's recommendation.

82. Taking into account the numerous provisions in the Penal Code which pertain to acts which cause severe physical or mental pain or suffering, it is highly unthinkable that an act of torture will not be considered a crime under the present General Civil Penal Code, whether committed abroad or within Norway, even without a provision which explicitly characterizes torture as a crime.

83. Torture is an act which causes severe pain or suffering (article 1). If the pain or suffering is physical, at least section 228 of the Penal Code (see Norway's initial report, paras. 18-19) will apply, and often one of the more severe provisions of chapter 21 or 22 of the Penal Code (for instance section 229 or 231) will be applicable (see annex 5). In the case of mental torture, section 229 of the Penal Code, sometimes in connection with section 232, will be applicable if the victim's health is injured or if he or she is reduced to helplessness, unconsciousness or any similar state. The victim's health will be considered injured if he or she has to stay in bed or becomes unable to work for some days. An anxiety neurosis will, for instance, be considered a health injury. If the victim suffers serious injury to his or her health, section 231 is applicable. Serious injury is defined in section 9. It includes loss or substantial impairment of sight, hearing, speech or reproductive capacity, disability, inability to continue work, serious disfigurement, deadly or protracted disease and serious mental injury. The penalty for an offence against section 231 is imprisonment from 2 to 15 years.

84. In Norway's initial report, it was also pointed out that sections 222 and 223 of the General Civil Penal Code, relating to coercion and unlawful deprivation of liberty, may be applicable in cases of torture (initial report, para. 20). This applies also if the suffering is mental. In addition, it should be noted that if the perpetrator is a public servant, section 115

penalizes the use of unlawful means in order to secure a certain explanation or a confession. Section 117 makes it a crime for a public servant to unlawfully make a sentence more severe than it should be, for instance by denying the detainee rights that he is entitled to.

85. A crime dealt with in sections 228, 229 or 231 of the General Civil Penal Code can be prosecuted in Norway, even if the crime has been committed abroad, and regardless of whether the perpetrator is a Norwegian or a foreign national (see section 12, No. 3 a) and No. 4 a)).

List of annexes*

1. CPT (94) 1: Report of the European Committee for the Prevention of Torture (CPT) to the Norwegian Government on its visit to Norway.

2. CPT/Inf (94) 12: The Norwegian Government's response to CPT.

3. 1257/95 D EBJ/kmr: The Norwegian report on action taken by the authorities to implement the CPT's recommendations.

4. Chapter 14 of the Criminal Procedure Act.

5. General Civil Penal Code.

6. Information about the Psychosocial Centre.

7. Documentation from the Centre: Mental Disorder among Refugees and the Impact of Persecution and Exile: Some Findings from an Out-Patient Population.

8. Documentation from the Centre: A Field Report: A Refugee Protest Action in a Host Country: Possibilities and Limitations of an Intervention by a Mental Health Unit.

9. Documentation from the Centre: A Clinical Approach to Human Rights Violations.

10. Act No. 100 of 17 July 1992 relating to Child Welfare.

11. A summary of the Parliamentary Ombudsman's Annual Report for 1995.

12. A leaflet describing the procedure for addressing complaints to the Parliamentary Ombudsman.

13. Summaries of two cases where the authorities have been criticized by the Parliamentary Ombudsman.

14. Act relating to Social Services, chapter 6A, and Act relating to Municipal Health Services.

15. Chapter 16 of the report NOU 1993:18 concerning the status of human rights conventions in Norway.

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* These annexes are available for consultation in the files of the United Nations Centre for Human Rights.